

# Sharī'ah Scholars, *Ijtihād* and Decision Making in Islāmic Finance

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## Abstract

Islāmic finance is developed based on the spirit, philosophy and principles of Sharī'ah. Sharī'ah contains the principles and foundations upon which financial system from an Islāmic perspective is established. These fundamentals act as guidance and framework on which the direction of Islāmic finance industry is set. All aspects of its operation need to be in compliance with the fundamental principles. Likewise, in Islāmic financial product structuring, the compliance to Sharī'ah principles is a prerequisite. This would include the whole processes from product's conceptual inception to developing products' structure, products Sharī'ah compliance manuals, reviewing the legal documentation, and producing report or opinion on the products' application for the business. The role of Sharī'ah advisor in this endeavor is very significant. His role would involve the *ex-ante* process of identifying the need of costumers towards particular product, identifying the appropriate contract and structuring the product in line with Islāmic contracts; and the *ex-post* processes of supervising the product application in the market, ensuring that Islāmic financial institutions follow the mechanism approved by the Sharī'ah advisor and preparing certification or Sharī'ah compliance report report. The paper attempts to explore Islāmic finance product structuring, various approaches in this regard, the role of Sharī'ah advisors in decision making, developing Islāmic financial products and certification that activities and income of IFIs are in line with the principles of Sharī'ah.

**Keywords:** Islāmic finance, *Maqāsid al-Sharī'ah*, *Sadd al-dhara'i'*, Sharī'ah compliance, Sharī'ah certification, *Ijtihād*.

**KAUJIE Classification:** A6, B2, C2, K1, L2, L24, L33, O1

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## 1. Introduction

Islāmic finance is a new field in contemporary context of Islāmic society. It emerged in contemporary times after centuries of Muslim society practicing secular financial system which is based on *ribā*. Islāmic finance aims to release Muslims from practicing *ribā* and other prohibited elements in financial transactions. It attempts to establish financial system based on the principles of Sharī'ah. Nevertheless, in this effort, there are challenges in coming up with the financial system model and products that would truly comply with the spirit and rules of Sharī'ah while at the same time able to fulfill the needs of society.

In this effort, the role of Sharī'ah scholars is important. In Islāmic finance, *ijtihad* is needed to settle juristic positions with regard to certain issues arising in emerging commercial and financial matters. Such role is very much required as the developing industry is very dynamic, progressive and challenging. The Sharī'ah scholars are facing a challenge to develop products that are not only viable and marketable, but also in line with the principles and requirements of Sharī'ah.

In this paper we will discuss the role of Sharī'ah scholars in developing Islāmic finance as well as the approaches taken in the *ijtihad* for Islāmic finance product structuring. The paper is systematically divided into three sections which discuss the role of Sharī'ah scholars in Islāmic finance, approaches in making Sharī'ah decisions and some requirements with regard to Sharī'ah decision making process.

### 1.1 The Role of Sharī'ah Scholars in Islāmic Finance

Sharī'ah scholar plays an important role in contemporary Islāmic financial practices especially in product structuring and development as well as in overseeing the application of different aspects of the Sharī'ah in Islāmic financial institutions. The role involves *ex ante* and *ex post* aspects of Sharī'ah governance, including Sharī'ah pronouncements (*fatāwā*), supervision (*riqābah*) and review (*mutāba'ah*) (Hasan, 2011: 35). The Sharī'ah scholar certifies each and every product, finance structure and service provided by the Islāmic financial institution that he represents.

The OIC Fiqh Academy, in its Resolution Number 17 (19/3) 2009, described the role of Sharī'ah board as '*issuing verdicts and Sharī'ah rulings related to the activities of Islāmic financial institutions, following up to ensure that the rulings are executed, and ensuring the sound application of the rulings.*' The resolution suggests that the role and responsibility to be fulfilled by the Sharī'ah board is extensive. As the

industry has grown, the duties and responsibilities of Sharī'ah boards have expanded - no longer limited to advice and product endorsement. At present, they are also involved in product development and innovation, in addition to supervision of Islāmic finance operations. On certain occasions, they also participate in developing policies and regulations for Islāmic finance. This development increases the challenges facing the Sharī'ah scholars, for they need to interact more with various people and stakeholders in the industry to understand and perform their roles better.

This shows the huge task and responsibility of Sharī'ah scholars in development of Islāmic finance. Accordingly, Aboumouamer (1989: 366) notes that the Sharī'ah scholars are considered as the stakeholders' advocate in Islāmic finance especially regarding Sharī'ah compliance, on the basis of which it is important to ensure that qualified and competent Sharī'ah advisors are appointed.

Regulators in Islāmic finance have placed minimum guidelines for eligibility to serve on a Sharī'ah board; for instance, a Sharī'ah advisor should possess necessary knowledge, expertise or experience in *fiqh al-mu'āmalāt* or *uṣūl al-fiqh*, have considerable knowledge of current practices in finance and Islāmic finance, and be a person of reputable character. However, much more is needed to ensure that Sharī'ah certification is conducted in the most befitting and effective manner. In Laldin and Furqani's observation (2014), in order to ensure the standard of advisory services provided, a Sharī'ah advisor should possess the following criteria:

- must have mastery in *fiqh al-mu'āmalāt* and *uṣūl al-fiqh*;
- should have sufficient knowledge of the current Islāmic and conventional finance practices;
- should deep understanding of *maqāsid al-Sharī'ah*;
- must have the capability to derive legal rulings;
- should have sufficient understanding of the issue and problem posed;
- Should have the attributes of boldness, trustworthiness and dynamism; and
- Should have good reputation and good Islāmic character.

In addition to the above criteria, the Sharī'ah committee members shall be practicing Muslims who are willing to independently and frankly state what they believe, in order to maintain the credibility of the decisions

made. This is important, as Islāmic finance is not only related to the 'legal' aspects of socio-economic and financial practices, but is also part of Islām's belief system that is best served if the Sharī'ah advisors serve as a role model for all stakeholders.

In developing Islāmic finance, efforts are directed to transforming the financial and banking system, and ultimately the whole economy, to conform to the Islāmic spirit, principles and objectives. The concern is not merely to secure the narrow legal compliance of banking and finance practices by screening negative elements in conventional financial practices, but a more substantive movement towards inspiring a good financial system enshrining Islāmic values and principles as implied in the concept of *maqāsid al-Sharī'ah* (Laldin and Furqani, 2013).

## **2. Approaches in making Sharī'ah related Decisions**

The role and responsibility of Sharī'ah scholars are very much established in making Sharī'ah decisions related to all aspects of Islāmic finance operations. This requires great intellectual effort from Sharī'ah scholars to understand both the sources of Islāmic law (*nassus*) and the context of economic and financial practices and operations. Therefore, the approaches taken to understand the texts and contexts should be appropriate so that the decisions made are correct.

In this matter, there are three possible ways or approaches taken by scholars in understanding the subject-matter and in making Sharī'ah related decisions in Islāmic finance. The approaches are i) too rigid or inflexible, ii) excessive flexibility and iii) moderate approach.

### **2.1 Rigidity and Inflexibility**

The rigidity (*al-tadyīq*) and inflexibility in making Sharī'ah decision might happen when the scholars tend to insist strict conditions and requirements on the financial practices in the modern context. The scholars having this approach might be reluctant to absorb the recent developments or common practices in society and adjust the same with the principles of Sharī'ah. At the same time, they tend to reject any innovation in practices on the basis of having no roots in classical practices or other. The result of such approach might bring difficulties as no alternative in financial practices could be offered with this approach.

Such rigidity and inflexibility approach might be adopted due to the following reasons:

### 2.1.1 Fanaticism towards a Particular *Madhhab*, Views or Scholars

Fanaticism towards any particular *madhhab*'s views e.g. any of Hanafī, Shāfi'ī, Mālikī, Hanbali, or Zaidi / Ja'fari views, cannot be an effective driving factor in making any Sharī'ah decision. Be it in matters related to *'ibādah* or *mu'āmalāh*. This is because the scholars will give their view based on the circumstances in which they are in and the issues posed to them. The requirements as well as the circumstances might change according to the change of time and circumstances.

Sheikh Yusuf al-Qardawi in his book *al-Ijtihād fī al-Islām* in this regard emphasised the following: "...some scholars when asked about a particular issue related to contemporary *mu'āmalāh* will always refer to a particular *madhhab* literature, if there are no similar instances in these literatures; they will disallow the referred *mu'āmalāh* issues on the ground that these issues did not exist in the classical literature; as though originally matter in *mu'āmalāh* is impermissible unless it is stipulated in the classical literatures".

No doubt the classical scholars have done tremendous effort in developing different areas of Islāmic *mu'āmalāh* and the contemporary scholars must refer to their work in order to further develop *fiqh al-mu'āmalāt*. However, it is also important for the contemporary scholars to venture beyond the scope of the classical *ijtihād* in order to further develop and enhance the Islāmic financial products.

### 2.1.2 Rigid Literal Textual reading without referring to the Objectives of Sharī'ah.

It is important for a scholar to understand *maqāsid al-Sharī'ah* in making any decision and not just rely on the literal meaning of the text. Understanding the *maqāsid* is an essential prerequisite for undertaking the process of *ijtihād* and determining the operational framework of Islāmic finance.

In this respect, Ibn Qayyim in "*I'lām al-Muwaqqi'īn*" (1991: Vol. 4, 134) emphasises that it is not allowed for a *muftī*<sup>1</sup> to quote the Qur'ān or Sunnah literally and say this is permissible and this is forbidden, unless he is aware what is being said and what is intended by the Lawgiver".

Nevertheless, this is not to say that the literal meaning of texts should be ignored. Instead, it is the middle course between the two extremes. The approach should not be like an ultra-literal approach, which ignores the *maqāsid* in favour of rigid textual understanding or an ultra-liberal approach, which throws around terms like *maqāsid* and *mu'āmalāh* in the

absence of any clearly defined methodology, and ends up disregarding, overriding or twisting the meaning of the Sharī'ah texts.

### **2.1.3 Unnecessarily Propagating the Usage of *Sadd al-Dharī'ah* in Disputed Issues.**

*Sadd al-dharī'ah* is blocking the lawful means to an unlawful end. The approach is taken to prevent certain harmful result to happen if certain action is done. *Sadd al-dharī'ah* is recognized as one of the legitimate sources of Islāmic law (Nyazee, 2000). However, unnecessarily propagating the usage of *sadd al-dharī'ah* concept in Islāmic law might lead to unnecessary prohibition of something and hence bring difficulties to society.

Nevertheless, unnecessary propagating *sadd al-dharī'ah* is not favourable. For example, some would disallow to structure Islāmic financial products by using the conventional products structure as a basis to start with simply because the conventional structure is developed based on *riba* and hence should be rejected altogether, although minimum requirements for its being compliant with Sharī'ah fundamentals are fulfilled by amending the *ribā* based structure. This approach is questionable as the means that is allowed should not be disallowed if the benefit of such action is greater than its harm. In addition, conventional structure might be allowed provided the prohibited elements have been removed and the Islāmized structure conforms to the principles and requirements of Sharī'ah.

## **2.2 Excessive Flexibility**

Excessive flexibility (*tasāhul*) in Islāmic finance product development is obvious among some of the scholars who will agree and allow most, if not all, what is brought to them. This approach is sometimes taken as a result of pressure from certain quarters for product approval or lack of proper knowledge about various aspects of the product or its structure, or the negligence on the part of the scholars in their investigation on the given issues. The other factors that might lead to excessive flexibility in making Sharī'ah related decisions is the tendency to please others for any reasons and lack of much needed care and knowledge in arriving at the right decision.

No doubt that Islām propagates tolerance and taking the easy and simple decision but this does not justify any decisions arrived at with negligence, incompetence or any conflicting interest. A Sharī'ah scholar must be aware of contemporary practices and the possible loopholes or

ruses that people may use for exploitation of the *fatwa* for unwarranted gains. Hence, *Ijtihād* in this regard should be understood as doing maximum effort in arriving at a certain decision where one sees no possibility for him to further investigate the issue. The output of *ijtihad* by a scholar, however, can be right or not. But this does not matter, provided that he has exercised all the means in arriving at the right decision. However, the matter of *ijtihad* has to be differentiated from normal *iftā'* or decision making by the Sharī'ah scholars while approving the products or issuing Sharī'ah certification. A wrong decision out of ignorance is not excusable. According to a *hadith* reported by Abū Dāwūd, "...a man who judges the people when he is ignorant will be in the Fire". Albānī termed this *Fadl* as *ḥaḍīṣ* (Abū Dāwūd, *Fadl* 3573) [see: Ayub, JIBM, December, 2014).

Some of the factors that might lead to excessive flexibility in Sharī'ah decision making are as follows:

### 2.2.1 Excessive Utilisation of the Principle of *Maṣlaḥah* and *Ḍarūrah*.

The principle of achieving benefits (*maṣlaḥah*) is one of the objectives of Sharī'ah that should be preserved by Sharī'ah scholars in their decision making process. Any decision pronounced should be with the aim of attaining benefits and removing harms to individual and society, of course remaining within the fundamental principles of the Sharī'ah. Likewise, Sharī'ah is very concerned with regard to the basic necessities of human being (*ḍarūriyyāt*) in which case Sharī'ah might allow even the prohibited actions, if its non-fulfilment might harm individual's life.

Nevertheless, some conditions have to be taken into consideration before applying the principle of *maṣlaḥah* and *ḍarūrah*. This is because their excessive utilisation might lead to undesired decision in the view of Sharī'ah. Among the examples of such usage in *mu'āmalāh* is the view which allows indulging in bank's interest on loans / financing in order to generate some perceived benefits in the economic activities. Practicing that is categorized as *ribā* which is prohibited by Sharī'ah is not acceptable, though might bring certain benefits to any of the related parties. Utilisation of *maṣlaḥah* is disallowed in the situation where it is against the explicit text. Similarly the utilisation of *ḍarūrah* has its limitation as stipulated in the maxim which reads, "Necessity should be estimated according to its required amount (*al-Ḍarūratu tuqaddaru bi-qadrehā*)".

### 2.2.2 Choosing the Facility and taking the easiest view of the *Madhāhib (al-talfiq bayn al-madhāhib)*.

No doubt Islām allows its followers to utilise the facility given by Allah. In certain occasion, if there is *ḍarūrah* (emergency needs), Sharī'ah allows individuals even to take impermissible things to survive. However, there are limits to it as stipulated in the legal maxim, "whatever is allowed because of an excuse would be cancelled when the excuse disappears (*mā jāza li-`udhr batala bi-zawālihi*)".

As for choosing the different views provided by different schools of Islāmic thought, the method should be finding the strongest view in accordance with the criteria and principles delineated in *uṣūl al-fiqh* and not the easiest, as the strongest view as per Qur'ān and Sunnah (the ultimate sources of Sharī'ah tenets) is the best view to be followed.

Likewise, the usage of legal devises (*al-hiyal al-fiqhiyyah*) particularly to succumb to any prohibited matters is not allowed. In this regard, *hilah* is used as a means of legal manipulation to actualize an illegitimate. *hilah* is impermissible if it is exercised with the clear intention of attaining an illegal end such as the negation of a Sharī'ah ruling (*ibtāl al-hukm*), the alteration of a Sharī'ah ruling (*tahwil al-hukm*), the legitimization of the illegitimate (*tahlil al-harām*), and the transgression of basic Sharī'ah principles. Such *hiyal* are strictly prohibited for they are attempts to defeat the noble objectives of the Sharī'ah (*maqāṣid al-Sharī'ah*) (Abdul Khir, 2010: 159).

### 2.3 The Moderate Approach

Islām is a system that emphasizes moderation (*al-wasatiyyah*) in everything. Sharī'ah scholars in Islāmic finance should follow this approach in resolving and arriving at a wise Sharī'ah decisions including tackling issues related to Islāmic finance. This means, the scholars shall investigate the issues and arrive at a decision without compromising the fundamentals of Sharī'ah. As for the interpretations, it might vary from one situation to another depending on the circumstances, practices as well as the need of society and the industry as a whole.

Imām al-Shatib<sup>1</sup> in "*al-Muwāfiqāt*" (1997: vol. 5, 276) emphasizes the importance of moderation when he says, "A wise *muft*<sup>1</sup> is the one who provides moderate and practical solutions for the public and will not burden them with unnecessary burdens (*al-shiddah*) and will not also be inclined towards excessive flexibility (up to the point of compromising Sharī'ah principles)".



Islām prefers its followers to be moderate in all their undertakings. It also emphasizes on the importance of making decisions which will serve the need of the people and at the same time are practical to be implemented. The concept of “*al-yusr*” (choosing the simple and accurate decision) is very much emphasized in Islām. The Prophet (pbuh) himself would always choose the easiest between two things as long as allowed in Islām. He also emphasized his followers to facilitate the needs in life without going through difficulties provided that it is allowed in Islām. This is based on the verse:

“Allah intends every facility for you; He does not want to put you to difficulties.” (al-Baqarah:185).

In addition, Islāmic system was revealed to bring blessing in life and not rigidity. This is evidence in the following verse:

“And We have sent you (O Muhammad pbuh) not but as a mercy for the ‘*Ālamin* (mankind, jinns and all that exists)” (al-Anbīyā’: 107).

Therefore, in the context of the development of Islāmic financial industry, it is important for the Sharī‘ah scholars to take the moderate approach, of course, without compromising the basic principles and tenets of the Sharī‘ah. The *ijtihād* in Islāmic finance needs to take into consideration all aspects, including ‘*illah*, *maṣlaḥah*, *hikmah* and *maqāṣid al-Sharī‘ah* so that a good result is achieved that links the universal with the particular, *uṣūl* (roots) with *furu‘* (branches), and practical law with its objectives. In other word, they are read all together in conjunction with their rationale and purposes so that a balance between process and purpose, form and substance, literal interpretation and substantive understanding in formulating the Sharī‘ah decision can be achieved (Laldin and Furqani, 2012).

Such a process would lead us to a balanced approach in deriving laws from the texts (*nasus*) and produce a moderate, balanced and just output (Qur’ān, 55:8-9). In practice, this can be done by studying the suitable Sharī‘ah principles to be applied in any financial products and at the same time try to understand the real need of market in the light of the Sharī‘ah tenets.

Ultimately, our goal should be to come up with various financial products that are in compliance with Sharī‘ah as also viable and practicable to satisfy various needs of mankind, also sustainable so that Islāmic finance could sustainably flourish in the future.

### **3. Some Requirements in Sharī'ah Decision Making**

To have correct ways and results in making Sharī'ah related decisions regarding Islāmic finance, Sharī'ah scholars have to equip themselves with full knowledge on the sources of Sharī'ah, rules and mechanisms to derive rulings from the sources as well as the current context of banking and financial practices. Sharī'ah scholars have to ensure that Islāmic finance operates on the basis of Sharī'ah principles by observing the pillars and conditions of contract in the operational mechanism and grounded with the objective of Sharī'ah of realizing human wellbeing and repelling the harms and difficulties in their life.

In the context of product structuring and development, Sharī'ah scholars must have full knowledge of the purpose of the products and their technicalities. Sharī'ah scholars have to ensure that product development entails the acceptable principles of the Sharī'ah. They also need to follow some acceptable Sharī'ah standards, whether those standards are developed locally or internationally. The rapid growth and advancement of Islāmic finance has resulted in the development of Sharī'ah standards and frameworks for product development by international bodies such as Accounting and Auditing Organization for Islāmic Financial Institutions (AAOIFI) and the Islāmic Financial Services Board (IFSB) or national bodies like the Sharī'ah boards / advisory councils of central banks and regulatory authorities in various jurisdictions. Thus, the task of Sharī'ah scholars is to ensure that these standards are upheld and followed, whenever applicable to a local situation, in order to preserve the high level of integrity of their decisions.

Furthermore, they have to ensure that the products have positive objectives and are not used as means to forbidden ends. It is also a major cause for concern if Islāmic finance proceeds are not well managed or are channeled to noncompliant activities or to *riba* based financial system. If this is not checked, then efforts to build a Sharī'ah-compliant system will be fruitless, as a permitted matter that leads to a prohibited matter is also prohibited. Sharī'ah scholars must be firm and strict so as not to allow any forbidden or doubtful activity or one that involves legal trickery (*ḥīlah*) (Abu Ghuddah, 2008: 10).

Sharī'ah scholars also need to be competent to scrutinize the documents related to products and transactions, as negligence will result in noncompliance and negative legal consequences. Therefore, they must have sufficient knowledge about the Sharī'ah, legal and operational aspects of the products and transactions. It is highly desirable that Sharī'ah

scholars be involved in product development from the early stages up until the contract is concluded. This will also require them to have a good command of languages, as they need to read and examine all the terms, conditions, clauses and secondary contracts that are set out in the contract, as well as all the supporting documents. They shall need to ensure clarity in Sharī'ah principles in the documents and that the contract is fair and just to the relevant parties (Laldin and Furqani, 2014).

In addition, Sharī'ah scholars must also assess the product's economic implications to the *'ummah*. This will require them to take the *maqāṣid* approach. It must be remembered that Islāmic finance products are supposed to provide facility to the people and not to burden them, as Islām considers wealth one of the essentials of human life. Therefore, Islāmic finance has to be reviewed on a macro-scale to ensure that it is serving the *'ummah* effectively. For instance, retail products must not be neglected, although wholesale products may yield more profits. The Islāmic financial system, which is commonly characterized as a moral and ethical system, must contribute effectively to overall wealth creation, growth and development, and to greater shared prosperity (Akhtar Aziz, 2005: 196).

Finally, Sharī'ah scholars have to ensure that the decisions of the Sharī'ah boards are understood by the practitioners so that the same are properly implemented, as they are the ones responsible for application of the decisions of the Sharī'ah boards. Negligence and lack of understanding on the part of the practitioners may jeopardize the whole process. Hence, Sharī'ah boards have to perform another duty to educate the practitioners on Sharī'ah principles so that both sides can mutually work for better Sharī'ah compliance in the products, operations and conduct of the Islāmic finance institutions. It is highly desirable that Sharī'ah scholars conduct training and engage in close interaction with officials in the institution to increase their understanding of Sharī'ah and *fiqh al-Mu'āmalāt*.

#### **4. Challenges in Sharī'ah Supervision of Islāmic Finance**

Looking at the expectation as discussed above, it is obvious that Sharī'ah advisory and supervision of Islāmic finance is not an easy job. It requires wide-ranging competency, alertness and ample time to be devoted for supervision with seriousness. In addition to that, there are several challenges that need to be addressed by the Sharī'ah scholars involved in the development of Islāmic finance industry. Among these challenges are:

#### **4.1 Knowledge and the Know-how of Islāmic Finance.**

Knowledge on Sharī'ah in its *uṣūl* (roots) and *furū'* (branches) should be mastered by the Sharī'ah scholars. At the same time, Sharī'ah scholars also must have sound knowledge on the modern finance and how it is practiced. It is also important for the Sharī'ah scholars to understand in full the different aspects of Islāmic finance including the structure, documentation, the regulators requirements and other aspects related to Islāmic finance. At present, not many scholars are fully well versed on the above aspects; they must take up the challenge in order to equip themselves with the necessary knowledge and skills.

#### **4.2 Synergizing between the Sharī'ah Requirements with the Legal and Regulatory Framework.**

Islāmic finance, in practice, is operating in various jurisdictions which are somehow having some similarities and differences in relation to the Sharī'ah. Sharī'ah scholars might be facing the challenge to be able to harmonize the contradictory country's legal and regulatory requirement with the Sharī'ah law. This may sometimes delay some of the processes particularly in finding the alternatives in order to ensure that the product satisfies all the above requirements. It is a challenging task which requires the Sharī'ah experts together with the regulator and industry players to sit together and find a viable solution to the issues. To ensure that the above requirements are met, it is important to engage all the experts from the very beginning of the development of product so as to ensure that all parties are aware of the anticipated consequences of the product.

#### **4.3 Sharī'ah Compliance and Viable Products.**

Sharī'ah scholars are also challenged to be able to come up with the product which satisfies the Sharī'ah, the country's legal and regulatory framework as well as viable and marketable. The task of the Sharī'ah scholars shall not only focus on the Sharī'ah aspects but also includes business aspects and market scenario and operations. Sometimes, it is easy to discover a product that is purely Sharī'ah compliant but is hardly marketable or its structure turns out to be very complex to understand and promote. On the other hand, certain products may be easily marketable but might not meet the Sharī'ah standards and requirements. Therefore, it is a challenge for Sharī'ah scholars to work together with the market experts to come up with a Sharī'ah compliant product that is applicable and feasible at the same time and hence bring benefits to the market players as well as customers at large.

#### **4.4 Clear and Transparent Procedures in Decision-making.**

Developing Islāmic finance in contemporary time is an open enterprise in the sense that it is not only the interest or responsibility of Sharī'ah scholars, but also the *'ummah* at large. Therefore, it is important to ensure that the procedures for decision-making by Sharī'ah scholars are clear and transparent. This is important in order to preserve the integrity of the Sharī'ah scholars, committees and the decisions made. Investigations of issues referred shall generally involve the study of *fiqh* and the examination of fatwá by other Sharī'ah scholars and *fiqh* councils, many of which have been classified and published as compendiums by many quarters. In addition, the experience of some Sharī'ah scholars who have served on the committees of several financial service providers may be of great value that can be emulated by other Sharī'ah scholars with transparency.

#### **5. Conclusion**

The Sharī'ah scholars are the backbone of the industry without which the integrity of the whole industry will be at stake. It is important to note that developing Islāmic finance on the basis of Sharī'ah is an *amānah* (conviction) and must be discharged with utmost professionalism and integrity. The challenges suggest that the expected role of Sharī'ah scholars in Islāmic finance development is to be able to ensure that all the decisions made are truly based on Sharī'ah, realistic and serve the interest of the *'ummah*. *Ijtihād* in Islāmic finance is a noble effort of finding answers on the practices of banking and finance in contemporary context that serve the purpose of human welfare one way or the other.

While currently the scholars are more involved in finding Sharī'ah compatibility of modern conventional finance practice and provide practical Sharī'ah compliant solutions within the conventional structure, in future a more genuine effort of producing distinct Islāmic finance products emerging from the philosophy, principles and *maqāṣid* of Sharī'ah is very much awaited and expected. For future progress, more effort and commitment from the regulators, industry players, Sharī'ah scholars and society at large are needed to ensure development of Islāmic finance on the right track in accordance with the principles and objectives of the Sharī'ah. Islāmic finance has to realize its full potential as a system, not merely a lawful means in doing financial business or a stopgap means of surviving the crisis.

## Bibliography

- Abdul Khir, Mohamed Fairooz. (201). “*Sharī‘ah Parameters of Hiyal in Islāmic Finance*”. *ISRA International Journal of Islāmic Finance*, 2 (2), 159 - 166.
- Abomouamer, Faris Mahmoud (1989), “*An Analysis of the Role and Function of the Sharī‘ah Control in Islāmic Banks*”, Ph.D Dissertation, Cardiff: University of Wales.
- Abu Ghuddah, Abdul Sattar (2008), “*Al Ijtihād wa Al Ifta’ fi Al Masarif Al Islāmiyyah*”, paper presented in the Conference of *Ifta’* and *Ijtihād* in the 21<sup>st</sup> Century at IIUM on 12<sup>th</sup> August.
- Akhtar Aziz, Zeti (2005), “*Islāmic Banking and Finance Progress and Prospects Collected Speeches*”: 2000 – 2005, Kuala Lumpur: Bank Negara Malaysia.
- Ayub, Muhammad; “*Case for Standardization of Fatawa, Products Approval and Sharī‘ah Certification Processes in Islāmic Finance*”; Editorial, Journal of Islāmic Business and Management (JIBM), Vol 4, No. 2; December, 2014.
- Al-Shatibi, Ibrahim ibn Musa. “*Al-Muwafaqat fi Usul al-Sharī‘ah*”. Edited by Abu ‘Ubaydah Mashhur Ibn Hasan ‘Ali Salman. Dar Ibn ‘Affan, 1997.
- Hasan, Zulkifli (2011), “*A Survey of Sharī‘ah Governance Practices in Malaysia, GCC Countries and the UK: Critical Appraisal*”, *International Journal of Islāmic and Middle Eastern Finance and Management*, 4 (1), 30-51.
- Ibn al-Qayyim, Muhammad ibn Abu Bakr. “*I‘lam al-Muwaqqi‘in ‘an Rabb al-‘Alamin*”. Edited by Muhammad ‘Abd al-Salam Ibrahim. Beirut: Dar al-Kutub al-‘Ilmiyyah, 1991.
- Laldin, Mohamad Akram and Furqani, Hafas. (2012). “*The Objective Of The Sharī‘ah In Islāmic Finance: Identifying The Ends (Maqasid) And The Means (Wasa’il)*”. *ISRA Research Paper No. 32*. Kuala Lumpur: ISRA.
- Laldin, Mohamad Akram and Furqani, Hafas. (2013). “*The Foundations of Islāmic Finance and the Maqasid al-Sharī‘ah Requirements*”. *Journal of Islāmic Finance*, 2 (1), 31-37.
- Laldin, Mohamad Akram and Furqani, Hafas. (2014). “*Meeting Expecttations: The Roles and Responsibilities of Sharī‘ah Scholars in Islāmic Finance*”. In M. Kabir Hassan and Mervyn K. Lewis (eds.), *Handbook on Islām and Economic Life*. UK: Edward Elgar, pp. 336-352.
- OIC Fiqh Academy. “*The Role of Sharī‘ah Supervision in Regulating the Operations of Islāmic Banks, Its Importance, Stipulations and the Way it Operates*”. Decision Number 177 (19/3) in its Resolution in the 19<sup>th</sup> Session Meeting held in Sharjah, UAE, 26-30 April 2009.